ECLI:EU:C:2020:476

Provisional text

JUDGMENT OF THE COURT (Grand Chamber)

18 June 2020 (*)

(Failure of a Member State to fulfil obligations — Admissibility — Article 63 TFEU — Free movement of capital — Existence of a restriction — Burden of proof — Indirect discrimination linked to the origin of the capital — Article 12 of the Charter of Fundamental Rights of the European Union — Right to freedom of association — National rules imposing on associations receiving financial support sent from other Member States of from third countries legally binding obligations of registration, declaration and publication which can be enforced — Article 7 of the Charter of Fundamental Rights — Right to respect for private life — Article 8(1) of the Charter of Fundamental Rights — Right to the protection of personal data — National rules imposing the disclosure of information on persons providing financial support to associations and of the amount of that support — Justification — Overriding reason in the public interest — Transparency of the financing of associations — Article 65 TFEU — Public policy — Public security — Fight against money laundering, financing of terrorism and organised crime — Article 52(1) of the Charter of Fundamental Rights)

In Case C-78/18,

ACTION under Article 258 TFEU for failure to fulfil obligations, brought on 6 February 2018,

European Commission, represented initially by V. Di Bucci, L. Havas, L. Malferrari and K. Talabér-Ritz, then by V. Di Bucci, L. Havas and L. Malferrari, acting as Agents,

applicant,

supported by:

Kingdom of Sweden, represented by A. Falk, C. Meyer-Seitz and H. Shev, acting as Agents,

intervener,

v

Hungary, represented by M.Z. Fehér and G. Koós, acting as Agents,

defendant,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, R. Silva de Lapuerta, Vice-President, J.-C. Bonichot, A. Arabadjiev, E. Regan, S. Rodin, L.S. Rossi, and I. Jarukaitis, Presidents of Chambers, E. Juhász, M. Ilešič, J. Malenovský (Rapporteur), D. Šváby and N. Piçarra, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: R. Șereș, Administrator,

having regard to the written procedure and further to the hearing on 22 October 2019,

after hearing the Opinion of the Advocate General at the sitting on 14 January 2020,

gives the following

Judgment

1 By its application, the European Commission seeks a declaration from the Court that, by adopting the provisions of the a külföldről támogatott szervezetek átláthatóságáról szóló 2017. évi LXXVI. törvény (Law No LXXVI of 2017 on the Transparency of Organisations which receive Support from Abroad; 'the Transparency Law'), which impose obligations of registration, declaration and publication on certain categories of civil society organisations directly or indirectly receiving support from abroad exceeding a certain threshold and which provide for the possibility of applying penalties to organisations that do not comply with those obligations, Hungary has introduced discriminatory, unjustified and unnecessary restrictions on foreign donations to civil society organisations, in breach of its obligations under Article 63 TFEU and Articles 7, 8 and 12 of the Charter of Fundamental Rights of the European Union ('the Charter').

I. Hungarian legislation

A. The Transparency Law

2 The preamble to the Transparency Law states, inter alia, that civil society organisations 'contribute … to democratic scrutiny of and public debate about public issues' and that they 'perform a decisive role in the formation of public opinion' and that '[their] transparency is overwhelmingly in the public interest'.

3 That preamble also states that 'support from unknown foreign sources [to civil society organisations] is liable to be used by foreign public interest groups to promote — through the social influence of those organisations — their own interests rather than community objectives in the social and political life of Hungary' and that that support 'may jeopardise the political and economic interests of the country and the ability of legal institutions to operate free from interference'.

4 Paragraph 1 of that law provides:

‘1. For the purposes of the application of this law “organisation in receipt of support from abroad” means every association or foundation which benefits from a financial donation as defined in Paragraph 1(2) (together referred to as: “organisation in receipt of support from abroad”).

2. For the purposes of this law, any donation of money or other assets coming directly or indirectly from abroad, regardless of the legal instrument, shall be treated as support where, in a given financial year, that donation — alone or cumulatively — comes to double the amount stipulated in Paragraph 6(1)(b) of the pénzmosás és a terrorizmus finanszírozása megelőzéséről és megakadályozásáról szóló 2017. évi LIII. törvény [(Law No LIII of 2017 on the prevention of and fight against money laundering and terrorist financing)].

…

4. This law shall not apply to:

(a) associations and foundations which are not regarded as civil society organisations;

(b) associations covered by the sportról szóló 2004. évi I. törvény [(Law No I of 2004 on sport)];

(c) organisations which carry on a religious activity;

(d) organisations and associations for national minorities covered by the nemzetiségek jogairól szóló 2011. évi CLXXIX. törvény [(Law No CLXXIX of 2011 on the rights of national minorities)] and foundations which, in accordance with their constitution, carry on an activity directly connected to the cultural autonomy of a national minority or which represent and protect the interests of a particular national minority.’

5 Paragraph 2 of the Transparency Law provides:

‘1. Every association and foundation within the meaning of Paragraph 1(1) must, within 15 days, give notice of the fact that it has become an organisation in receipt of support from abroad where the amount of support it has received in the year in question comes to double the amount stipulated in Paragraph 6(1)(b) of the Law No LIII of 2017 on the prevention of and fight against money laundering and terrorist financing.

2. An organisation in receipt of support from abroad must send the declaration referred to in Paragraph 2(1) to the court with jurisdiction for the place of its registered office (“the court for the place of registration”) and provide the information specified in Annex I. The court for the place of registration shall include the declaration in the records relating to the association or foundation in the register of civil organisations and other organisations considered to be non-commercial (“the register”) and shall record the association or foundation as an organisation in receipt of support from abroad.

3. Applying by analogy the rules laid down in Paragraph 2(1), the organisation in receipt of support from abroad must forward to the court for the place of registration, at the same time as its calculation of the amount received, a declaration containing the information specified in Annex I relating to support received in the previous year. The declaration must set out, for the year in question:

(a) where the support is less than 500 000 [Hungarian] forints [(HUF) (approximately EUR 1 500)] per donor, the information set out in Annex I, point (A), part II,

(a) where the support is equal to or more than [HUF] 500 000 … per donor, the information set out in Annex I, point (B), part II.

4. By the 15th day of each month, the court for the place of registration must send to the ministry with responsibility for management of the civil information portal the name, registered office and tax identifier of the associations and foundations which it has entered in the register as organisations in receipt of support from abroad in the previous month. The ministry shall disseminate without delay the information forwarded to it in order to ensure that the information is freely available to the public on the electronic platform set up for that purpose.

5. After making its declaration for the purposes of Paragraph 2(1), the organisation in receipt of support from abroad must indicate without delay on its homepage and in its publications and other press products, as provided for in the Law on the freedom of the press and the fundamental rules on media content, that it has been classified as an organisation in receipt of support from abroad within the meaning of this law.

6. The organisation in receipt of support from abroad shall continue to be bound by the obligation laid down in Paragraph 2(5) for as long as it is classified as [such] an organisation for the purposes of this law.'

6 Paragraph 3 of the Transparency Law states:

'1. If the association or foundation fails to comply with the obligations imposed on it under this law, the public prosecutor must, upon becoming aware of this and pursuant to the rules applicable to him or her, require the association or foundation to comply with those obligations within the next 30 days.

2. If the organisation in receipt of support from abroad fails to comply with the obligation indicated by the public prosecutor, the latter must again require it to comply with the obligations imposed on it by this law within 15 days. Within 15 days of the expiry of that time limit without any response, the public prosecutor shall apply to the court for the place of registration for the imposition of a fine under Paragraph 37(2) of the civil szervezetek bírósági nyilvántartásáról és az ezzel összefüggő eljárási szabályokról szóló 2011. évi CLXXXI. törvény [(Law No CLXXXI of 2011 on the registration of civil society organisations with the courts and on the applicable rules and procedures)].

3. After imposing a fresh order on the organisation under Paragraph 3(2), the public prosecutor shall act in accordance with the principle of proportionality, applying by analogy the rules laid down in the egyesülési jogról, a közhasznú jogállásról, valamint a civil szervezetek működéséről és támogatásáról szóló 2011. évi CLXXV. törvény [(Law No CLXXV of 2011 on the right of association, the status of a not-for-profit association and the operation and funding of civil society organisations)] and in Law No CLXXXI of 2011 on the registration of civil society organisations with the courts and on the applicable rules and procedures.'

7 Paragraph 4 of the Transparency Law provides as follows:

'1. Where, during the year following the financial year referred to in Paragraph 2(3), the contribution of cash or other assets from which the organisation in receipt of foreign assistance has benefitted does not come to double the amount indicated in Paragraph 6(1)(b) of Law No LIII of 2017 on the prevention of and fight against money laundering and terrorist financing, the association or foundation shall cease to be regarded as an organisation in receipt of support from

abroad and it shall communicate that information — applying by analogy the rules relating to the declaration — within 30 days of the adoption of its annual report for the year in which that situation arises. Pursuant to Paragraph 2(4), the court for the place of registration shall also notify this fact to the ministry with responsibility for management of the civil information portal, who shall remove without delay the data of the organisation concerned from the electronic platform set up for that purpose.

2. Following the declaration referred to in Paragraph 4(1), the court with jurisdiction for the place of registration shall without delay delete from the register the information that the association or foundation is an organisation in receipt of support from abroad.'

8 Annex I to the Transparency Law states, in part I thereof, that the declaration on the change of a civil society organisation to an organisation in receipt of support from abroad, referred to in Paragraph 2 of that law, must indicate the year in which such a change takes place and the name, the registered office and the identification number of the organisation concerned.

9 In addition, Annex I provides, in part II, point A thereof, that if the total of the support received from abroad does not reach the threshold referred to in Paragraph 2(3) of that law, the declaration at issue must state, first, the total of the cash contributions received, secondly, the total of the contributions of other assets received and, thirdly, the total number of donors from which those contributions have come.

10 Lastly, Annex I states, in part II, point B thereof, that if the total of the support received from abroad is equal to or exceeds the threshold referred to in Paragraph 2(3) of that law, the declaration must list the amount and the source of each item of support received, indicating, if that source is a natural person, the name, the country and the city of residence of that person, or, if that source is a legal person, the business name and the registered office of the latter.

B. **Law No CLXXV of 2011**

11 Law No CLXXV of 2011 on the right of association, the status of a not-for-profit association and the operation and funding of civil society organisations, to which Paragraph 3 of the Transparency Law refers, provides in Paragraph 3(3) thereof as follows:

'The right of association must not … entail an infringement or an incitement to commit an infringement …'

12 Paragraph 11(4) of that law provides:

'The court shall dissolve the association, upon an application by the public prosecutor, if its operation or activity infringe Paragraph 3(3) to (5).'

C. **Law No CLXXXI of 2011**

13 Law No CLXXXI of 2011 on the registration of civil society organisations with the courts and on the applicable rules and procedure, to which Paragraph 3 of the Transparency Law also refers, contains, inter alia, Paragraph 71G(2) under which the competent court may adopt, with regard to a civil society organisation, the following measures:

'(a) impose a fine of [HUF] 10 000 to 900 000 [(approximately EUR 30 to 2 700)] on the organisation or representative …;

(b) annul the unlawful … decision of the organisation and, if necessary, order the adoption of a fresh decision, stating an appropriate time limit for compliance with that order;

(c) if it is likely that the proper operation of the organisation can be restored by summoning its principal body, summon the decision-making body of the organisation or entrust that task to an appropriate person or organisation, with the cost to be borne by the organisation;

(d) appoint an administrator for a maximum period of 90 days if it is not possible to ensure by other means that the proper operation of the organisation is restored and if, in view of the outcome, that is particularly justified in the light of the operation of the organisation or other circumstances;

(e) dissolve the organisation.'

D. **Law No LIII of 2017**

14 The amount fixed in Paragraph 6(1)(b) of Law No LIII of 2017 on the prevention of and fight against money laundering and terrorist financing, to which Paragraphs 1, 2 and 4 of the Transparency Law refer, is HUF 7.2 million (approximately EUR 20 800).

II. **Pre-litigation procedure**

15 On 14 July 2017, the Commission sent Hungary a letter of formal notice ('the letter of formal notice') in which it took the view that, by adopting the Transparency Law, that Member State had failed to fulfil its obligations under Article 63 TFEU and Articles 7, 8 and 12 of the Charter, and granted Hungary a period of one month within which to submit its comments.

16 On 17 July 2017, Hungary requested an extension of that time limit, which the Commission refused.

17 On 14 August 2017 and 7 September 2017, Hungary sent the Commission two series of comments in relation to the letter of formal notice, disputing the validity of the complaints in that letter.

18 On 5 October 2017, the Commission issued a reasoned opinion ('the reasoned opinion') in which it found that Hungary had failed to fulfil its obligations under Article 63 TFEU and Articles 7, 8 and 12 of the Charter by introducing discriminatory, unjustified and unnecessary restrictions on foreign donations to civil society organisations through the provisions of the Transparency Law, which impose obligations of registration, declaration and publication on certain categories of civil society organisations directly or indirectly receiving support from abroad exceeding a certain threshold, and which provide for the possibility of applying penalties to organisations not complying with these obligations. The Commission also set Hungary a period of one month within which it had to take the necessary measures to comply with the reasoned opinion or submit comments to the Commission.

19 On 12 October 2017, Hungary requested an extension of that time limit, which the Commission refused.

20 On 5 December 2017, Hungary sent the Commission comments in relation to the reasoned opinion, disputing the validity of the complaints in that opinion.

21 Remaining unconvinced by those comments, the Commission decided, on 7 December 2017, to bring the present action.

III. **Procedure before the Court**

22 By document lodged at the Registry of the Court on 2 August 2018, the Kingdom of Sweden applied for leave to intervene in the case in support of the form of order sought by the Commission.

23 By a document lodged at the Court Registry on 22 August 2018, Hungary submitted its written observations on that application.

24 By order of the President of the Court of 26 September 2018, *Commission* v *Hungary* (C-78/18, not published, EU:C:2018:790), the President of the Court granted that application.

IV. **Admissibility**

A. **Arguments of the parties**

25 In its statement in defence, Hungary claims that the action must be dismissed as inadmissible on account of the Commission's conduct during the pre-litigation procedure and the illegalities resulting from that conduct.

26 In that regard, Hungary states that the Commission, first, required it to submit its comments on the letter of formal notice and then on the reasoned opinion within a period of one month, instead of that of two months normally applied in pre-litigation procedures, secondly, rejected its applications for extension of that period in brief and stereotypical terms which did not explain how there was any particular urgency and, thirdly, took the decision to bring the present action just two days after receiving Hungary's comments on the reasoned opinion.

27 In addition, Hungary submits that the Commission's conduct rendered the pre-litigation procedure unlawful. That conduct demonstrates that that institution did not make an adequate attempt to hear it, in breach of the principle of loyal cooperation set out in Article 4(3) TEU and of the right to good administration set out in Article 41 of the Charter. Furthermore, that conduct rendered the refutation of the complaints made by the Commission more difficult and thus constituted an infringement of the rights of the defence.

28 In its rejoinder, Hungary moreover observes that the Commission seeks to justify its conduct by pleading the fact that the Hungarian authorities did not wish to repeal the Transparency Law. However, such a fact is liable to be the case in any legal proceedings seeking a finding that a State has failed to fulfil its obligations and therefore does not prove that there was a situation warranting particular urgency. Furthermore, that circumstance cannot be relied upon to justify a reduction in the time limits applicable to the pre-litigation procedure if the objectives of that procedure are not to be disregarded.

29 The Commission, supported by the Kingdom of Sweden, disputes the merits of those arguments.

B. **Findings of the Court**

30 As is apparent from the Court's case-law, the fact that the Commission makes the pre-litigation procedure subject to short time limits is not in itself capable of leading to the

inadmissibility of the subsequent action for failure to fulfil obligations (see, to that effect, judgment of 31 January 1984, *Commission* v *Ireland*, 74/82, EU:C:1984:34, paragraphs 12 and 13). Such a finding of inadmissibility is only to be made where the Commission's conduct made it more difficult for the Member State concerned to refute that institution's complaints and thus infringed the rights of the defence, which it is for that Member State to prove (see, to that effect, judgments of 12 May 2005, *Commission* v *Belgium*, C-287/03, EU:C:2005:282, paragraph 14, and of 21 January 2010, *Commission* v *Germany*, C-546/07, EU:C:2010:25, paragraph 22).

31 In the present case, Hungary has not proven that the Commission's conduct made it more difficult for it to refute the complaints put forward by that institution. Moreover, as is apparent from an examination of the conduct of the pre-litigation procedure, as set out in paragraphs 15 to 20 above, first, having submitted comments on the letter of formal notice within the one-month period it was set by the Commission, three weeks later Hungary submitted fresh comments on that subject, which were accepted by that institution. Then, that Member State submitted observations on the reasoned opinion within a period of two months corresponding to that which is usually applied in the context of pre-litigation procedures, even though it had been set a period of one month for that purpose, and those observations were also accepted by the Commission. Lastly, an analysis of the documents exchanged in the pre-litigation procedure and of the application initiating proceedings shows that the Commission duly took into consideration all the comments made by Hungary at the various stages of that procedure.

32 Therefore, it has not been established that the Commission's conduct rendered it more difficult for Hungary to refute the complaints raised by that institution and thereby infringed the rights of the defence.

33 The present action is accordingly admissible.

V. **The burden of proof**

A. **Arguments of the parties**

34 In the defence, Hungary submits that, even if the action is admissible, it must be dismissed at the outset on the ground that it does not satisfy the requirements applicable to the taking of evidence. It argues that it is for the Commission to prove the existence of the infringements in respect of which that institution is seeking a declaration, and that the Commission may not rely on any presumption for that purpose. In the present case, that institution has not produced any evidence that the Transparency Law has had effects in practice on the free movement of capital enshrined in Article 63 TFEU.

35 The Commission, supported by the Kingdom of Sweden, disputes the merits of those arguments.

B. **Findings of the Court**

36 As is apparent from settled case-law of the Court, it is for the Commission to prove its allegations that obligations have not been fulfilled and it may not rely on any presumption for that purpose (judgments of 25 May 1982, *Commission* v *Netherlands*, 96/81, EU:C:1982:192, paragraph 6, and of 13 February 2014, *Commission* v *United Kingdom*, C-530/11, EU:C:2014:67, paragraph 60).

37 However, the existence of a failure to fulfil obligations may be proved, where it has its origin in the adoption of a legislative or regulatory measure whose existence and application are not contested, by means of a legal analysis of the provisions of that measure (see, to that effect, judgments of 18 November 2010, *Commission* v *Portugal*, C-458/08, EU:C:2010:692, paragraphs 52 and 55, and of 19 December 2012, *Commission* v *Belgium*, C-577/10, EU:C:2012:814, paragraph 35).

38 In the present case, the infringement which is imputed to Hungary by the Commission has its origin in the adoption of a legislative measure of which neither the existence nor the application are disputed by that Member State, and whose provisions are the subject of a legal analysis in the application initiating proceedings.

39 Therefore, Hungary is not justified in alleging that the Commission did not produce evidence of the Transparency Law's effects in practice on the free movement guaranteed under Article 63 TFEU.

VI. **Substance**

A. **Article 63 TFEU**

1. ***The existence of a restriction on the free movement of capital***

(a) ***Arguments of the parties***

40 The Commission, supported by the Kingdom of Sweden, submits, first, that the Transparency Law restricts the free movement of capital, treating movements of capital between Hungary, on one hand, and the other Member States and third countries, on the other hand, in an indirectly discriminatory manner. While not referring to nationality, that law applies by reference to a criterion relating to the existence of movements of capital originating from abroad, more specifically to financial support paid to civil society organisations established in Hungary by natural or legal persons with their place of residence or their registered office in another Member State or in a third country.

41 Secondly, Hungary is not justified in claiming that the use of that criterion reflects an objective difference between the situation of Hungarian nationals and that of nationals of other Member States or of third countries, deriving from the fact that it is easier for the competent Hungarian authorities to monitor financial support granted by the former, whose place of residence or registered office is within Hungary, than that granted by the latter. The place of establishment cannot be used as a parameter to assess the objective comparability of two situations.

42 Lastly, in the alternative the Commission and the Kingdom of Sweden argue that, if the Transparency Law is not classified as an indirectly discriminatory measure, it should nonetheless be found that it establishes a set of obligations such as to deter not only civil society organisations established in Hungary but also natural or legal persons who could provide them with financial support sent from other Member States or third countries from exercising the free movement of capital guaranteed to them under Article 63 TFEU. The obligations imposed on the organisations concerned to register as 'organisations in receipt of support from abroad' and to systematically present themselves as such would deter them from continuing to accept such support. In addition, the accompanying obligations of declaration and publication would deter the persons granting such aid from continuing to do so and would discourage other persons from doing so.

43 Hungary maintains, in defence, first, that the Transparency Law cannot be classified as an indirectly discriminatory measure. Its application depends on a criterion linked not to the nationality of the persons granting the financial support to the civil society organisations established in Hungary, but to the source of such support. Moreover, recourse to that criterion is warranted by the fact that financial support paid by persons established in Hungary is a distinct situation from that of financial support granted by persons established abroad, inasmuch as the former may be monitored more easily than the latter by the Hungarian authorities and rules in relation to the prevention of money laundering and transparency are not necessarily applicable in the Member States or the third countries from which the latter support comes.

44 Secondly, nor can the obligations of registration, declaration and publication established by the Transparency Law and the accompanying penalties be regarded as having a deterrent effect on the free movement of capital. Those obligations are drafted in objective and neutral terms. Furthermore, they exclusively concern natural or legal persons paying financial support over certain thresholds, of which there would not be many.

(b) ***Findings of the Court***

45 Under Article 63(1) TFEU, all restrictions on the movement of capital between Member States and between Member States and third countries are prohibited.

46 As is apparent from the terms of that provision, its infringement requires the existence both of movements of capital with a cross-border dimension and of a restriction to the free movement of the latter.

47 With regard, first, to the existence of movements of capital, it follows from settled case-law of the Court that, in the absence of a definition in the FEU Treaty of the concept of 'movements of capital', the latter is to be understood having regard, by way of indication and non-exhaustively, to the nomenclature contained in Annex I to Council Directive 88/361/EEC of 24 June 1988 for the implementation of Article 67 of the [EC] Treaty [(Article repealed by the Treaty of Amsterdam)] (OJ 1988 L 178, p. 5) (judgments of 27 January 2009, *Persche*, C-318/07, EU:C:2009:33, paragraph 24, and of 21 May 2019, *Commission* v *Hungary (Rights of usufruct over agricultural land)*, C-235/17, EU:C:2019:432, paragraph 54).

48 Thus, the Court has already held that inheritances and gifts, which fall under heading XI, entitled 'Personal Capital Movements', of Annex I to that directive are included in the concept of movements of capital, except in cases where their constituent elements are confined within a single Member State (see, to that effect, judgments of 26 April 2012, *van Putten*, C-578/10 to C-580/10, EU:C:2012:246, paragraph 29, and of 16 July 2015, *Commission* v *France*, C-485/14, not published, EU:C:2015:506, paragraph 22).

49 In addition, that concept covers financial loans or credits as well as sureties or other guarantees granted by non-residents to residents, such as those listed in points VIII and IX of Annex I to that directive.

50 In the present case, the Transparency Law applies, according to Paragraph 1(1) and (2) thereof, and subject to the exclusions provided for in Paragraph 1(4), where an association or foundation in Hungary receives a 'donation of money or other assets coming directly or indirectly from abroad, regardless of the legal instrument', and reaching a given threshold during a given financial year.

51 It follows that that law applies where there are capital movements with a cross-border dimension and which may, having regard to the stipulation that they are covered 'regardless of the legal instrument', take the form, inter alia, of gifts, endowments, inheritances, loans, credits, guarantees or sureties granted by natural or legal persons.

52 So far as concerns, in the second place, the existence of a restriction to the free movement of capital, it follows from consistent case-law of the Court that the concept of a 'restriction' in Article 63 TFEU covers, generally, any restriction on movements of capital both between Member States (see, to that effect, judgment of 22 October 2013, *Essent and Others*, C-105/12 to C-107/12, EU:C:2013:677, paragraph 39 and the case-law cited) and between Member States and third countries (see, to that effect, judgments of 18 January 2018, *Jahin*, C-45/17, EU:C:2018:18, paragraphs 19 to 21, and of 26 February 2019, *X (Controlled companies established in third countries)*, C-135/17, EU:C:2019:136, paragraph 26).

53 In particular, that concept includes State measures which are discriminatory in nature in that they establish, directly or indirectly, a difference in treatment between domestic and cross-border movements of capital which does not correspond to an objective difference in circumstances (see, to that effect, judgments of 12 December 2006, *Test Claimants in the FII Group Litigation,* C-446/04, EU:C:2006:774, paragraph 46, and of 16 July 2015, *Commission* v *France*, C-485/14, not published, EU:C:2015:506, paragraphs 25 and 26), and which are therefore liable to deter natural or legal persons from other Member States or third countries from carrying out cross-border movements of capital.

54 In the present case, it should be noted, first of all, that the Transparency Law makes all associations or foundations falling within its scope and receiving financial support from a Member State other than Hungary, or a third country, subject to a set of specific obligations consisting in registering 'as an organisation in receipt of support from abroad' with the competent courts (Paragraph 2(1)), in submitting to those courts each year a declaration containing a set of data relating to their identity, to the financial support reaching or exceeding certain amounts which they receive from natural or legal persons having their place of residence or registered office in another Member State or in a third country and to the identity of such persons (Paragraph 2(2) and (3)), and in indicating on their internet site and in their publications and other press material the information that they are organisations in receipt of support from abroad (Paragraph 2(5)).

55 Next, that law requires the dissemination, by the ministry with responsibility for management of the civil information portal, of information in relation to those associations and foundations on an electronic platform set up for that purpose and freely accessible to the public (Paragraph 2(4)).

56 Lastly, it provides that a failure to comply with the obligations applicable to the associations and foundations at issue exposes them to a set of penalties including the adoption of compliance orders by the competent public prosecutor, the imposition by the competent court of fines of between HUF 10 000 and HUF 900 000 (approximately EUR 30 and EUR 2 700) and the possibility of dissolution being ordered by that court at the request of the public prosecutor (Paragraph 3).

57 Those various measures, which were introduced together and which pursue a common objective, put in place a set of obligations which, having regard to their content and their combined effects, are such as to restrict the free movement of capital which may be relied upon both by civil society organisations established in Hungary, as the beneficiaries of capital movements taking the form of financial support sent to them from other Member States or third countries, and by the

natural and legal persons who grant them such financial support and who are therefore behind those capital movements.

58 More specifically, the provisions referred to in paragraphs 50 and 54 to 56 of the present judgment establish a set of rules which applies, exclusively and in a targeted manner, to associations and foundations receiving financial support reaching the thresholds provided for by the Transparency Law that comes from other Member States or third countries. In particular, those provisions single them out as 'organisations in receipt of support from abroad', requiring them to declare themselves, to register and systematically to present themselves to the public as such, subject to penalties which may extend to their dissolution. In thus stigmatising those associations and foundations, those provisions are such as to create a climate of distrust with regard to them, apt to deter natural or legal persons from other Member States or third countries from providing them with financial support.

59 Furthermore, that set of rules entails the imposition of additional formalities and administrative burdens exclusively on those associations and foundations on account of the 'foreign' origin of the financial support made available to them.

60 Those provisions also target the persons providing financial support to those associations or foundations from other Member States or third countries by providing for the public disclosure of information on those persons and that financial support, which is likewise such as to deter those persons from providing such support.

61 In so doing, the provisions at issue, seen as a whole, treat not only the associations and foundations established in Hungary which receive financial aid that is sent from other Member States or from third countries differently from those which receive financial support from a Hungarian source, but also treat the persons who provide those associations and foundations with financial support sent from another Member State or third country differently from those who do so from a place of residence or registered office located in Hungary.

62 Those differences in treatment depending on the national or 'foreign' origin of the financial support in question, and therefore on the place where the residence or registered office of the natural or legal persons granting the support is established, constitute indirect discrimination on the basis of nationality (see, by analogy, in the field of freedom of movement for workers, judgments of 24 September 1998, *Commission* v *France*, C-35/97, EU:C:1998:431, paragraphs 38 and 39, and of 5 May 2011, *Commission* v *Germany*, C-206/10, EU:C:2011:283, paragraphs 37 and 38).

63 Contrary to what is contended by Hungary, the place of residence or of the registered office of the natural or legal persons granting that financial support cannot, by definition, be a valid criterion for finding that there is an objective difference between the situations at issue and for consequently ruling out the existence of such indirect discrimination (see, to that effect, judgment of 16 June 2011, *Commission* v *Austria*, C-10/10, EU:C:2011:399, paragraph 35).

64 Therefore, the national provisions at issue constitute indirectly discriminatory measures, inasmuch as they establish differences in treatment which do not correspond to objective differences in situations.

65 It follows that, viewed together, the obligations of registration, declaration and publication imposed on the 'organisations in receipt of support from abroad' under Paragraphs 1 and 2 of the Transparency Law and the penalties provided for in Paragraph 3 of that law constitute a restriction

on the free movement of capital, prohibited by Article 63 TFEU unless it is justified in accordance with the FEU Treaty and with the case-law.

2. ***The existence of justifications***

(a) ***Arguments of the parties***

66 The Commission and the Kingdom of Sweden maintain that the restriction on the free movement of capital entailed by the Transparency Law cannot be justified either by one of the reasons referred to in Article 65 TFEU or by an overriding reason in the public interest.

67 In that regard, that institution and that Member State admit that the objectives relied upon by Hungary, consisting in increasing the transparency of the financing of civil society organisations, on the one hand, and in safeguarding public policy and public security and combating money laundering, the financing of terrorism and, more broadly, organised crime, on the other hand, are in principle legitimate.

68 However, they submit that it is clear in the present case that those objectives cannot warrant obligations such as those implemented by the Transparency Law.

69 Article 65(1)(b) TFEU authorises the Member States to adopt measures justified on grounds of public policy or public security but those reasons should be interpreted strictly and cannot justify legislation whose provisions stigmatise on principle and indiscriminately 'organisations in receipt of support from abroad'. In addition, Hungary has not established that there is a genuine, present and sufficiently serious threat to public policy and public security, and has not demonstrated that the obligations put in place by the Transparency Law enable money laundering, the financing of terrorism and, more broadly, organised crime to be combated effectively.

70 The objective of transparency and, furthermore, traceability of movements of capital intended for organisations which participate in public life might be regarded as an overriding reason in the public interest. However, in a European Union founded on common values and which promotes the active participation of its citizens in public life, including in a Member State other than that where they are established, that objective cannot justify national legislation which is based on the assumption that civil society organisations in receipt of financial support from persons established in other Member States are suspect.

71 In any event, the Commission and the Kingdom of Sweden argue, the provisions of the Transparency Law go beyond what is necessary and proportionate to reach the objectives relied upon by Hungary.

72 In defence, that Member State contends, in the first place, that that law is justified primarily by an overriding reason in the public interest and, secondarily, by some of the reasons referred to in Article 65 TFEU.

73 First, that law was adopted in a context in which the amount by which civil society organisations are financed by capital sent from other Member States or third countries has increased, from HUF 68.4 thousand million (approximately EUR 228 million) in respect of 2010 to HUF 169.6 thousand million (approximately EUR 565 million) in respect of 2015, and of legislative work undertaken both at European and at national level with the aim of ensuring enhanced traceability of capital movements. It is therefore justified by an overriding reason in the

public interest consisting in increasing the transparency of the financing of civil society organisations, having regard to their influence on public life.

74 Secondly, that law is also justified on grounds of public policy and public security, within the meaning of Article 65(1)(b) TFEU, consisting in combating money laundering, the financing of terrorism and, more broadly, organised crime, by increasing transparency with regard to financing which may conceal suspicious activities.

75 In the second place, Hungary contends that the Transparency Law is necessary and proportionate to those various objectives.

(b) ***Findings of the Court***

76 As the Court has consistently held, a State measure which restricts the free movement of capital is permissible only if, in the first place, it is justified by one of the reasons referred to in Article 65 TFEU or by an overriding reason in the public interest and, in the second place, it observes the principle of proportionality, a condition that requires the measure to be appropriate for ensuring, in a consistent and systematic manner, the attainment of the objective pursued and not to go beyond what is necessary in order for it to be attained (see, to that effect, judgment of 21 May 2019, *Commission* v *Hungary (Rights of usufruct over agricultural land)*, C-235/17, EU:C:2019:432, paragraphs 59 to 61 and the case-law cited).

77 Moreover, it is for the Member State concerned to demonstrate that these two cumulative conditions are met (see, to that effect, judgment of 10 February 2009, *Commission* v *Italy*, C-110/05, EU:C:2009:66, paragraph 62 and the case-law cited). As regards, specifically, the condition that the provisions at issue must be justified by one of the reasons listed in Article 65 TFEU or by an overriding reason in the public interest, that Member State must prove, in a concrete manner and by reference to the circumstances of the case, that those provisions are justified (see, to that effect, judgments of 8 May 2003, *ATRAL*, C-14/02, EU:C:2003:265, paragraphs 66 to 69, and of 16 July 2009, *Commission* v *Poland*, C-165/08, EU:C:2009:473, paragraphs 53 and 57).

78 In the present case, so far as the justification relied on by Hungary as its principal argument is concerned, the Court has already observed that the objective consisting in increasing the transparency of financial support granted to natural or legal persons out of public funds granted by the European Union, by means of obligations of declaration and publication, may be considered, in the light of the principles of openness and transparency by which the activity of the EU institutions must be guided in accordance with the second paragraph of Article 1 TEU, Article 10(3) TEU and Article 15(1) and (3) TFEU, to be an overriding reason in the public interest. Indeed, that objective is apt to improve the level of information enjoyed by citizens on that subject and to enable them to participate more closely in public debate (see, to that effect, judgment of 9 November 2010, *Volker und Markus Schecke and Eifert*, C-92/09 and C-93/09, EU:C:2010:662, paragraphs 68 to 71 and the case-law cited).

79 Since, as is agreed both between the Commission and the Kingdom of Sweden, and by Hungary, some civil society organisations may, having regard to the aims which they pursue and the means at their disposal, have a significant influence on public life and public debate (ECtHR, 14 April 2009, *Társaság a Szabadságjogokért v. Hungary*, CE:ECHR:2009:0414JUD003737405, §§ 27, 36 and 38, and ECtHR, 8 November 2016, *Magyar Helsinki Bizottság v. Hungary*, CE:ECHR:2016:1108JUD001803011, §§ 166 and 167), it must be held that the objective consisting in increasing transparency in respect of the financial support granted to such organisations may also constitute an overriding reason in the public interest.

80 Moreover, according to the Court's case-law, as an overriding reason in the public interest, that objective of increasing the transparency of the financing of associations may justify the adoption of national legislation which restricts the free movement of capital from third countries more heavily than it does the free movement of capital from other Member States. Capital movements from third countries may be distinguished from capital movements from other Member States inasmuch as they are not subject, in their country of origin, to the regulatory harmonisation and cooperation between national authorities which apply in all of the Member States (see, to that effect, judgments of 18 December 2007, *A*, C-101/05, EU:C:2007:804, paragraphs 36 and 37, and of 26 February 2019, *X* (*Controlled companies established in third countries*), C-135/17, EU:C:2019:136, paragraph 90).

81 In the present case, however, in the first place, the obligations of registration, declaration and publication and the penalties introduced by the provisions of the Transparency Law referred to in paragraph 65 above apply indiscriminately to all civil society organisations receiving, from any Member State other than Hungary or any third country, financial aid of an amount reaching the thresholds provided for by that law.

82 Despite bearing the burden of proof with regard to justification, Hungary has not explained why the objective on which it is relying of increasing the transparency of the financing of associations allegedly warrants those obligations applying indiscriminately to any financial support from any other Member State or any third country, where its amount reaches the thresholds provided for by the Transparency Law. Moreover, neither does it set out why that objective allegedly justifies the obligations at issue applying indiscriminately to all the organisations which fall within the scope of that law, instead of targeting those which, having regard to their aims and the means at their disposal, are genuinely likely to have a significant influence on public life and public debate.

83 In the second place, the Transparency Law requires each of those organisations to register and present themselves systematically under the specific designation 'organisation in receipt of support from abroad'. The preamble to that law also states that support granted to civil society organisations by persons established 'abroad' is 'liable to be used by foreign public interest groups to promote — through the social influence of those organisations — their own interests rather than community objectives in the social and political life of Hungary' and that that support 'may jeopardise the political and economic interests of the country and the ability of legal institutions to operate free from interference'.

84 It follows from this that Hungary wished to increase the transparency of the financing of associations because it considers financial support sent from other Member States or from third countries liable to jeopardise its significant interests.

85 However, even if it were to be conceded that some of the financial support sent from other Member States or third countries and granted to the organisations to which the Transparency Law applies could be regarded as likely to jeopardise Hungary's significant interests, the fact remains that the grounds relied upon by that Member State for the purposes of increasing the transparency of the financing of associations, as set out in paragraph 83 above, cannot justify the obligations referred to in that paragraph.

86 The objective of increasing the transparency of the financing of associations, although legitimate, cannot justify legislation of a Member State which is based on a presumption made on principle and applied indiscriminately that any financial support paid by a natural or legal person established in another Member State or in a third country and any civil society organisation

receiving such financial support are intrinsically liable to jeopardise the political and economic interests of the former Member State and the ability of its institutions to operate free from interference.

87 Consequently, the objective of increasing the transparency of the financing of associations does not appear in the present case to be capable of justifying the Transparency Law, having regard to the content and the purpose of the provisions of that law.

88 So far as concerns the grounds of public policy or public security mentioned in Article 65(1)(b) TFEU, which Hungary relies upon in the alternative, such grounds may, as is apparent from the Court's case-law, be relied upon in a given field in so far as the EU legislature has not completely harmonised the measures which seek to ensure their protection (see, to that effect, judgments of 23 October 2007, *Commission* v *Germany*, C-112/05, EU:C:2007:623, paragraphs 72 and 73, and of 25 April 2013, *Jyske Bank Gibraltar*, C-212/11, EU:C:2013:270, paragraph 60).

89 As the Court has already observed, the EU legislature has only partially harmonised the measures seeking to combat money laundering and the financing of terrorism, and so therefore the Member States are still entitled to rely on the fight against money laundering and the financing of terrorism to justify national provisions restricting free movement of capital, as grounds of public policy (see, to that effect, judgments of 25 April 2013, *Jyske Bank Gibraltar*, C-212/11, EU:C:2013:270, paragraphs 61 to 64, and of 31 May 2018, *Zheng*, C-190/17, EU:C:2018:357, paragraph 38).

90 Likewise, in the absence of more general harmonisation in that field, the fight against organised crime may be relied upon as a ground of public security, within the meaning of Article 65(1)(b) TFEU, by the Member States.

91 However, it is settled case-law of the Court that where the grounds of public policy and public security mentioned in Article 65(1)(b) TFEU allow a derogation from a fundamental freedom provided for by the FEU Treaty they must be interpreted strictly, so that their scope cannot be determined unilaterally by each Member State without any control by the EU institutions. Therefore, those grounds cannot be relied upon unless there is a genuine, present and sufficiently serious threat to a fundamental interest of society (see, to that effect, judgment of 14 March 2000, *Église de scientologie*, C-54/99, EU:C:2000:124, paragraph 17).

92 In the present case, Hungary states aggregated figures relating to the increase, in the period from 2010 to 2015, in the financing of civil society organisations established on its territory by capital sent from other Member States or third countries, but does not submit any argument such as to establish specifically that that recorded increase led to such a threat.

93 As follows from paragraphs 83 and 86 of the present judgment, Hungary seems to have based the Transparency Law not on the existence of a genuine threat but on a presumption made on principle and indiscriminately that financial support that is sent from other Member States or third countries and the civil society organisations receiving such financial support are liable to lead to such a threat.

94 Moreover, even if, contrary to the case-law cited in paragraph 91 above, it were conceivable to accept reliance on a threat which, while not genuine and present, were nonetheless potential, that threat could, having regard to the requirement of strict interpretation recalled in that paragraph, justify only the adoption of measures corresponding to its nature and its seriousness. In the present case, the financial thresholds triggering the application of the obligations put in place by the

Transparency Law were fixed at amounts which clearly do not appear to correspond with the scenario of a sufficiently serious threat to a fundamental interest of society, which those obligations are supposed to prevent.

95 Therefore, the existence of a genuine, present and sufficiently serious threat to a fundamental interest of society, which would enable the grounds of public policy and public security mentioned in Article 65(1)(b) TFEU to be relied upon, has not been established.

96 Accordingly, the Transparency Law can be justified neither by an overriding reason in the public interest linked to increasing the transparency of the financing of associations nor by the grounds of public policy and public security mentioned in Article 65(1)(b) TFEU.

97 Having regard to all the foregoing considerations, it must be held that, by adopting the provisions of the Transparency Law referred to in paragraph 65 above, Hungary has failed to fulfil its obligations under Article 63 TFEU.

B. **Articles 7, 8 and 12 of the Charter**

1. ***The applicability of the Charter***

(a) ***Arguments of the parties***

98 The Commission, supported by the Kingdom of Sweden, submits in its pleadings that since the Transparency Law restricts a fundamental freedom guaranteed by the FEU Treaty, it must also be compatible with the Charter.

99 When asked by the Court at the hearing as to the scope of that requirement, in the light of the judgment of 21 May 2019, *Commission* v *Hungary (Rights of usufruct over agricultural land)* (C-235/17, EU:C:2019:432), which was delivered after the written part of the procedure had closed in the present case, the Commission added that that requirement entails determining whether the Transparency Law limits rights or freedoms enshrined in the Charter and then, if so, assessing on the basis of the arguments put forward by Hungary whether that law appears nevertheless to be justified.

100 Hungary, to which a question was also put on that subject by the Court at the hearing, took note of that judgment.

(b) ***Findings of the Court***

101 As follows from the Court's case-law, where a Member State argues that a measure of which it is the author and which restricts a fundamental freedom guaranteed by the FEU Treaty is justified on the basis of that Treaty or by an overriding reason in the public interest recognised by EU law, such a measure must be regarded as implementing Union law within the meaning of Article 51(1) of the Charter, such that it must comply with the fundamental rights enshrined in the Charter (judgments of 21 December 2016, *AGET Iraklis*, C-201/15, EU:C:2016:972, paragraphs 63 and 64, and of 21 May 2019 *Commission* v *Hungary (Rights of usufruct over agricultural land)*, C-235/17, EU:C:2019:432, paragraphs 64 and 65).

102 In the present case, as observed in paragraphs 72 to 74 above, Hungary submits that the obligations put in place by the provisions of the Transparency Law referred to in paragraph 65

above are justified both by an overriding reason in the public interest and by reasons mentioned in Article 65 TFEU.

103 The provisions of that law must therefore, as the Commission and the Kingdom of Sweden rightly observe, comply with the Charter, and that requirement entails that those provisions do not impose any limitations on the rights and freedoms laid down by the Charter or, if they do, that those limitations are justified in the light of the requirements set out in Article 52(1) of the Charter (see, to that effect judgments of 21 December 2016, *AGET Iraklis*, C-201/15, EU:C:2016:972, paragraphs 66 and 70, and of 20 March 2018, *Menci*, C-524/15, EU:C:2018:197, paragraphs 39 and 41).

104 Consequently, it is necessary to examine whether those provisions limit the rights to which the Commission refers and, if so, whether they are nevertheless justified, as Hungary asserts in reply.

2. ***The existence of limitations on the rights enshrined in the Charter***

(a) ***Arguments of the parties***

105 The Commission, supported by the Kingdom of Sweden, submits that the Transparency Law limits, in the first place, the right to the freedom of association guaranteed in Article 12(1) of the Charter and, in the second place, the right to respect for private and family life and the right to protection of personal data, which are the subjects of, respectively, Article 7 and Article 8(1) of the Charter.

106 As regards the right to the freedom of association, the Commission states, first of all, that the exercise of that right covers not only the ability to create and to dissolve an association but also, in the meantime, the opportunity to have it exist and operate without unjustified interference by the State. Secondly, it argues that the capacity to receive financial resources is essential to the operation of associations. Lastly, it submits that in the present case, first, the obligations of declaration and publication put in place by the Transparency Law are liable to render significantly more difficult the action of civil society organisations established in Hungary, secondly, that the accompanying obligations of registration and use of the designation ‘organisation in receipt of support from abroad’ are such as to stigmatise those organisations and, thirdly, that the penalties attached to a failure to comply with those various obligations threaten the very existence of such organisations inasmuch as they include the possibility of their dissolution.

107 As regards the right to respect for private and family life and the right to protection of personal data, the Commission considers that the Transparency Law limits those rights by providing for obligations of declaration and publication which entail the communication of civil information to the competent courts and to the ministry with responsibility for management of the civil information portal, as well as the subsequent disclosure to the public of information including, depending on the case, the names, countries and cities of residence of the natural persons or the business names and registered offices of the legal persons who have provided financial support reaching certain thresholds from another Member State or from a third country to civil society organisations established in Hungary.

108 In defence, Hungary puts forward, in the first place, that the Transparency Law does not restrict the right to freedom of association. That law merely lays down rules in relation to the exercise by civil society organisations established in Hungary of their activities, together with penalties for the failure to comply with those rules. In addition, the obligations of registration and

publication for which they provide are drafted in neutral terms and relate to an objective item of information, concerning the fact that those organisations receive financial support of a certain significance from a foreign source. Lastly, neither those obligations nor the related designation ‘organisation in receipt of support from abroad’ have any stigma attached to them. On the contrary, it is clear from the preamble to the Transparency Law that receiving financial support from a foreign source does not in itself have any blame attached to it.

109 In the second place, the data which under that law is to be communicated to the competent courts and disclosed to the public cannot, in itself, be classified as personal data falling within the scope of Article 8(1) of the Charter or data whose communication and disclosure limit the right to respect for private and family life guaranteed in Article 7 of the Charter. Moreover, persons who provide financial support to civil society organisations should, inasmuch as in doing so they seek to influence public life, be regarded as public persons enjoying less protection of their rights than mere individuals.

(b) ***Findings of the Court***

110 As regards, in the first place, the right to freedom of association, that right is enshrined in Article 12(1) of the Charter, which sets out that everyone has the right to freedom of association at all levels, in particular in political, trade union and civic matters.

111 That right corresponds to the right guaranteed in Article 11(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950. It must therefore be regarded as having the same meaning and scope as the latter, in accordance with Article 52(3) of the Charter.

112 In this connection, first, according to the case-law of the European Court of Human Rights the right to freedom of association constitutes one of the essential bases of a democratic and pluralist society, inasmuch as it allows citizens to act collectively in fields of mutual interest and in doing so to contribute to the proper functioning of public life (ECtHR, 17 February 2004, *Gorzelik and Others v. Poland*, CE:ECHR:2004:0217JUD004415898, §§ 88, 90 and 92, and ECtHR, 8 October 2009, *Tebieti Mühafize Cemiyyeti and Israfilov v. Azerbaijan*, CE:ECHR:2009:1008JUD003708303, §§ 52 and 53).

113 Secondly, that right does not only include the ability to create or dissolve an association (ECtHR, 17 February 2004, *Gorzelik and Others v. Poland*, CE:ECHR:2004:0217JUD004415898, § 52, and ECtHR, 8 October 2009, *Tebieti Mühafize Cemiyyeti and Israfilov v. Azerbaijan*, CE:ECHR:2009:1008JUD003708303, § 54), but also covers the possibility for that association to act in the meantime, which means, inter alia, that it must be able to pursue its activities and operate without unjustified interference by the State (ECtHR, 5 October 2006, *Moscow Branch of the Salvation Army v. Russia*, CE:ECHR:2006:1005JUD007288101, §§ 73 and 74).

114 Lastly, it is apparent from the case-law of the European Court of Human Rights that, while it may, depending on the case, be justified, legislation which renders significantly more difficult the action or the operation of associations, whether by strengthening the requirements in relation to their registration (ECtHR, 12 April 2011, *Republican Party of Russia v. Russia*, CE:ECHR:2011:0412JUD001297607, §§ 79 to 81), by limiting their capacity to receive financial resources (ECtHR, 7 June 2007, *Parti nationaliste basque — Organisation régionale d’Iparralde v. France*, CE:ECHR:2007:0607JUD007125101, §§ 37 and 38), by rendering them subject to obligations of declaration and publication such as to create a negative image of them (ECtHR, 2 August 2001, *Grande Oriente d’Italia di Palazzo Giustiniani v. Italy*,

CE:ECHR:2001:0802JUD003597297, §§ 13 and 15) or by exposing them to the threat of penalties, in particular of dissolution (ECtHR, 5 October 2005, *Moscow Branch of the Salvation Army v. Russia*, CE:ECHR:2006:1005JUD007288101, § 73) is nevertheless to be classified as interference in the right to freedom of association and, accordingly, as a limitation of that right, as it is enshrined in Article 12 of the Charter.

115 It must be ascertained in the light of that guidance whether, in the present case, the obligations put in place by the provisions of the Transparency Law referred to in paragraph 65 above constitute limitations on the right to freedom of association, in particular inasmuch as they render significantly more difficult the action and the operation of the associations and foundations which are subject to them, as the Commission submits.

116 In this respect, it must first be observed that the obligations of declaration and publicity implemented by those provisions are such as to limit the capacity of the associations and foundations at issue to receive financial support sent from other Member States or third countries, having regard to the dissuasive effect of such obligations and the penalties attached to any failure to comply with them.

117 Secondly, the systematic obligations imposed on the associations and foundations falling within the scope of the Transparency Law to register and present themselves under the designation ‘organisation in receipt of support from abroad’ must, as Hungary accepts, be understood in the light of the preamble to that law, whose content was recalled in paragraph 83 above.

118 In that context, the systematic obligations in question are liable, as the Advocate General observed in points 120 to 123 of his Opinion, to have a deterrent effect on the participation of donors resident in other Member States or in third countries in the financing of civil society organisations falling within the scope of the Transparency Law and thus to hinder the activities of those organisations and the achievement of the aims which they pursue. They are furthermore of such a nature as to create a generalised climate of mistrust vis-à-vis the associations and foundations at issue, in Hungary, and to stigmatise them.

119 On that basis, the provisions of the Transparency Law referred to in paragraph 65 above limit the right to freedom of association protected in Article 12(1) of the Charter.

120 In the second place, the Commission invokes the right to respect for private and family life in conjunction with the right to protection of personal data, claiming that they are limited by the obligations of declaration and publication provided for by the Transparency Law.

121 According to Article 7 of the Charter, everyone has the right to respect for his or her private and family life, home and communications. In addition, under Article 8(1) of the Charter, everyone has the right to protection of personal data concerning him or her.

122 The right to respect for private and family life enshrined in Article 7 of the Charter corresponds to that guaranteed in Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and must therefore be regarded as having the same meaning and the same scope (judgments of 5 October 2010, *McB.*, C-400/10 PPU, EU:C:2010:582, paragraph 53, and of 26 March 2019, *SM (Child placed under Algerian kafala)*, C-129/18, EU:C:2019:248, paragraph 65).

123 According to the European Court of Human Rights, that right compels public authorities to refrain from any unjustified interference in the private and family life of persons and in the relations

between them. It thus imposes a negative and unconditional obligation on the public authorities which does not require implementation by way of specific provisions and which may also nevertheless be supplemented by a positive obligation to adopt legal measures seeking to protect private and family life (ECtHR, 24 June 2004, *Von Hannover v. Germany*, CE:ECHR:2004:0624JUD005932000, § 57, and ECtHR, 20 March 2007, *Tysiąc v. Poland*, CE:ECHR:2007:0320JUD000541003, §§ 109 and 110).

124 The Court has held that provisions imposing or allowing the communication of personal data such as the name, place of residence or financial resources of natural persons to a public authority must be characterised, in the absence of the consent of those natural persons and irrespective of the subsequent use of the data at issue, as an interference in their private life and therefore as a limitation on the right guaranteed in Article 7 of the Charter, without prejudice to the potential justification of such provisions. The same is true of provisions providing for the dissemination of such data to the public (see, to that effect, judgments of 20 May 2003, *Österreichischer Rundfunk and Others*, C-465/00, C-138/01 and C-139/01, EU:C:2003:294, paragraphs 73 to 75 and 87 to 89; of 9 November 2010, *Volker und Markus Schecke and Eifert*, C-92/09 and C-93/09, EU:C:2010:662, paragraphs 56 to 58 and 64; and of 2 October 2018, *Ministerio Fiscal*, C-207/16, EU:C:2018:788, paragraphs 48 and 51).

125 On the other hand, the communication to a public authority of nominative and financial data relating to legal persons and the dissemination of that data to the public is not such as to limit the right guaranteed in Article 7 of the Charter unless the official title of those legal persons incorporates the name of one or more natural persons (judgment of 9 November 2010, *Volker und Markus Schecke and Eifert*, C-92/09 and C-93/09, EU:C:2010:662, paragraph 53).

126 The right to the protection of personal data enshrined in Article 8(1) of the Charter, which is closely connected with the right of respect for private and family life guaranteed in Article 7 of the Charter (see, to that effect, judgments of 9 November 2010, *Volker und Markus Schecke and Eifert*, C-92/09 and C-93/09, EU:C:2010:662, paragraph 47, and of 24 November 2011, *Asociación Nacional de Establecimientos Financieros de Crédito*, C-468/10 and C-469/10, EU:C:2011:777, paragraph 41), for its part precludes information in relation to identified or identifiable natural persons from being disseminated to third parties, whether that be public authorities or the general public, unless that dissemination takes place in the context of fair processing of that information meeting the requirements laid down in Article 8(2) of the Charter (see, to that effect, judgment of 9 November 2010, *Volker und Markus Schecke and Eifert*, C-92/09 and C-93/09, EU:C:2010:662, paragraph 49). Apart from in that situation, such dissemination, which constitutes the processing of personal data, must therefore be regarded as limiting the right to the protection of personal data guaranteed in Article 8(1) of the Charter (see, to that effect, judgment of 2 October 2018, *Ministerio Fiscal*, C-207/16, EU:C:2018:788, paragraph 51).

127 In the present case, it must be first be noted that the information concerned by the obligations of declaration and publication provided for by the Transparency Law includes the name, country and city of residence of the natural persons who grant financial support reaching certain thresholds to civil society organisations established in Hungary, and the amount of that support, as follows from paragraphs 5 and 10 above. As indicated in those paragraphs, it also includes, in addition to the official title and the registered office of legal persons granting such financial support, the business name of those legal persons, which may itself include the name of natural persons.

128 Such data falls within the scope of the protection of private life guaranteed in Article 7 of the Charter, as follows from the case-law recalled in paragraphs 124 and 125 above.

129 Secondly, it is true, as Hungary observes, that the European Court of Human Rights has recognised that inasmuch as the public has a right to be informed and as that right can, in special circumstances, even extend to aspects of the private life of a public figure, such as a politician, public figures cannot claim the same protection of their private life as private persons (ECtHR, 24 June 2004, *Von Hannover v. Germany*, CE:ECHR:2004:0624JUD005932000, § 64, and ECtHR, 7 February 2012, *Von Hannover v. Germany (No. 2)*, CE:ECHR:2012:0207JUD004066008, § 110).

130 However, the concept of 'public figure' is defined strictly, the European Court of Human Rights having, for example, as is apparent from the judgments cited in the preceding paragraph, ruled out regarding a person not exercising any political role as such, despite that person being very well known.

131 The fact that natural or legal persons with their residence or their registered office in another Member State or in a third country have granted to civil society organisations established in Hungary financial support reaching the thresholds provided for by the Transparency Law does not allow such persons to be regarded as public figures. Even if, given their specific aims, some of those organisations and those persons must be regarded as participating in public life in Hungary, the fact remains that granting such financial support does not entail the exercise of a political role.

132 Consequently, the obligations of declaration and publication provided for by the Transparency Law limit the right to respect for private and family life enshrined in Article 7 of the Charter.

133 Lastly, although the objective consisting in increasing the transparency of the financing of associations may be considered to meet a public interest, as is apparent from paragraph 79 above, its implementation, where it leads to the processing of personal data, must nonetheless observe the requirements of fair processing set out in Article 8(2) of the Charter. In the present case, Hungary does not in any way submit that the provisions laying down those obligations meet those requirements.

134 In those circumstances, and having regard to the considerations set out in paragraphs 126 and 127 above, those obligations must also be regarded as limiting the right to the protection of personal data guaranteed in Article 8(1) of the Charter.

3. ***The existence of justifications***

(a) ***Arguments of the parties***

135 The Commission and the Kingdom of Sweden claim that the limitations imposed by the Transparency Law on the rights enshrined respectively in Article 12, Article 7 and Article 8(1) of the Charter do not appear to be justified in the light of the requirements laid down in Article 52(1) of the Charter.

136 They argue that, although the objectives of transparency and the safeguarding of public policy and public security relied upon by Hungary may in principle be regarded as objectives of general interest recognised by the Union for the purposes of that provision, that Member State has not demonstrated that in the present case those objectives justify limitations such as those imposed by the Transparency Law on the right to freedom of association, the right to respect for private and family life and the right to protection of personal data.

137 In any event, that law does not meet the requirement of proportionality laid down in Article 52(1) of the Charter.

138 In defence, Hungary submits that increasing the transparency of the financing of associations must be regarded as an objective of general interest recognised by the Union, within the meaning of Article 52(1) of the Charter. Furthermore, the measures put in place by the Transparency Law meet the other requirements set out in that provision.

(b) ***Findings of the Court***

139 It is apparent from Article 52(1) of the Charter, inter alia, that any limitation on the exercise of the rights and freedoms recognised by the Charter must genuinely meet objectives of general interest recognised by the Union.

140 The Court has found in paragraph 96 above that the provisions of the Transparency Law, referred to in paragraph 65 above, cannot be justified by any of the objectives of general interest recognised by the Union which Hungary relied upon.

141 It follows from that assessment that those provisions, which in addition to imposing restrictions on the fundamental freedom protected under Article 63 TFEU impose limitations on the rights enshrined in Articles 12, 7 and 8(1) of the Charter, as the Court has noted in paragraphs 119, 132 and 134 above, do not in any event meet those objectives of general interest.

142 Accordingly, by adopting those provisions, Hungary failed to fulfil its obligations under Articles 7, 8 and 12 of the Charter.

C. **Conclusion**

143 In the light of all the foregoing considerations, it must be held that, by adopting the provisions of the Transparency Law referred to in paragraph 65 above, which impose obligations of registration, declaration and publication on certain categories of civil society organisations directly or indirectly receiving support from abroad exceeding a certain threshold and which provide for the possibility of applying penalties to organisations that do not comply with those obligations, Hungary has introduced discriminatory and unjustified restrictions on foreign donations to civil society organisations, in breach of its obligations under Article 63 TFEU and Articles 7, 8 and 12 of the Charter.

VII. **Costs**

144 Under Article 138(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs, if costs have been applied for in the successful party's pleadings. Since Hungary has been unsuccessful in the present case, it must be ordered to pay the costs, in accordance with the form of order sought by the Commission.

145 Under Article 140(1) of those rules, the Member States and institutions which have intervened in the proceedings are to bear their own costs. Consequently, the Kingdom of Sweden must bear its own costs.

On those grounds, the Court (Grand Chamber) hereby:

1. **Declares that, by adopting the provisions of the a külföldről támogatott szervezetek átláthatóságáról szóló 2017. évi LXXVI. törvény (Law No LXXVI of 2017 on the Transparency of Organisations which receive Support from Abroad), which impose obligations of registration, declaration and publication on certain categories of civil society organisations directly or indirectly receiving support from abroad exceeding a certain threshold and which provide for the possibility of applying penalties to organisations that do not comply with those obligations, Hungary has introduced discriminatory and unjustified restrictions on foreign donations to civil society organisations, in breach of its obligations under Article 63 TFEU and Articles 7, 8 and 12 of the Charter of Fundamental Rights of the European Union;**

2. **Orders Hungary to pay the costs;**

3. **Orders the Kingdom of Sweden to bear its own costs.**

[Signatures]

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* Language of the case: Hungarian.